

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ANTHONY BISPO,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:20-cv-01457-SAB

ORDER REMANDING ACTION FOR  
FURTHER PROCEEDINGS

(ECF No. 20)

**I.**

**INTRODUCTION**

Plaintiff Anthony Bispo (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner” or “Defendant”) denying his application for Social Security Income (SSI) benefits pursuant to Title XVI of the Social Security Act. The matter is currently before the Court on the parties’ briefs, which were submitted without oral argument, to Magistrate Judge Stanley A. Boone.<sup>1</sup> For the reasons set forth below, the action shall be remanded to the Commissioner for further proceedings.

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<sup>1</sup> The parties have consented to the jurisdiction of the United States Magistrate Judge and this action has been assigned to Magistrate Judge Stanley A. Boone for all purposes. (ECF Nos. 8, 9, 10.)

## II.

BACKGROUND<sup>2</sup>

On April 15, 2016, Plaintiff filed a Title XVI application for supplemental security income (SSI) under the Social Security Act, alleging a period of disability beginning April 23, 1984.<sup>3</sup> (Admin. Rec. (“AR”) 20, ECF No. 13-1; but see AR 221, 291 (indicating application was submitted on May 10, 2016).) Plaintiff’s claim was initially denied on August 2, 2016, and denied upon reconsideration on January 9, 2017. (AR at 184–87, 189–93.)

On March 9, 2017, Plaintiff requested a hearing before an Administrative Law Judge (“ALJ”). (AR 202.) On March 16, 2017, Plaintiff’s request was granted. (AR 203.) Plaintiff was advised that he would receive notice of the date of his scheduled hearing at least twenty days before the date of his hearing. In a letter dated September 5, 2018, Plaintiff was notified that his hearing date was set for December 5, 2018. (AR 219.) With respect to submitting supplemental medical records, the letter also provided:

**If you [Plaintiff] are aware of or have more evidence, such as recent records, reports, or evaluations, you must inform me [the ALJ] about it or give it to me no later than 5 business days before the date of your hearing. If you do not comply with this requirement, I may decline to consider the evidence unless the late submission falls within a limited exception.**

If you missed the deadline to inform us about or submit evidence, I will accept the evidence if I have not yet issued a decision and you did not inform us about or submit the evidence before the deadline because:

1. Our action misled you;
2. You had a physical, mental, educational, or linguistic limitation(s) that prevented you from informing us about or submitting the evidence earlier, or;

<sup>2</sup> For ease of reference, the Court will refer to the administrative record by the pagination provided by the Commissioner and as referred to by the parties, and not the ECF pagination. However, the Court will refer to the parties’ briefings by their ECF pagination.

<sup>3</sup> As noted in the ALJ’s decision, SSI benefits are not payable prior to the month following the month in which the application is filed. (AR 20 (citing 20 C.F.R. § 416.335)); see also *Wellington v. Berryhill*, 878 F.3d 867, 872 (9th Cir. 2017) (a claimant is eligible for SSI once he becomes disabled, but cannot receive benefits for any period before his application date) (citing 42 U.S.C. §§ 1382(c)(2), (c)(7), 1382c(a)(3)(A)). Therefore, the ALJ considered Plaintiff’s alleged disability as of April 15, 2016. However, to the extent Plaintiff’s application was actually submitted on May 10, 2016 (see AR 221, 291), any potential benefits should derive from that date.

1                   3. Some other unusual, unexpected, or unavoidable  
2                   circumstance beyond your control prevented you from  
3                   informing us about or submitting the evidence earlier.

4                   (AR 221 (emphasis in original).)

5                   Plaintiff retained counsel on October 8, 2018. (ECF No. 20 at 3; AR 239.)

6                   In a letter dated December 6, 2018, Plaintiff was notified that his hearing had been  
7                   postponed, and that he would receive a new hearing date at least seventy-five days in advance of  
8                   the hearing. (AR 250.) The letter also directed Plaintiff to submit any additional evidence  
9                   immediately. In a letter dated January 7, 2019, Plaintiff's hearing before the ALJ was reset for  
10                  April 3, 2019. (AR 251.) This notice letter contained the same information and advisements  
11                  regarding submitting supplemental evidence as was provided in the September 5, 2018 letter.  
12                  (AR 253.)

13                 On April 3, 2019, Plaintiff appeared before ALJ Craig Denney for his administrative  
14                 hearing. (AR 121–54.) At the hearing, Plaintiff's counsel noted there was some very recent  
15                 psychiatric treatment, which was not included in the administrative record. (AR 124.) The ALJ  
16                 allowed an additional ten days for Plaintiff to supplement the record, *i.e.*, permitting Plaintiff to  
17                 file supplemental records by April 15, 2019. (ECF No. 20 at 3; AR 126–27.) Plaintiff did not  
18                 meet this deadline, but instead uploaded approximately ninety-three pages of supplemental  
19                 records on May 20, 2019. (ECF No. 20 at 3, 5.) The ALJ issued his decision the same day. (AR  
20                 17.) In his decision, the ALJ found that Plaintiff was not disabled because he could perform other  
21                 jobs that existed in significant numbers in the national economy. (AR 17–28.) It is undisputed  
22                 that the ALJ's decision does not contemplate Plaintiff's untimely submitted supplemental records.

23                 On June 11, 2019, Plaintiff sought review of the ALJ's decision by the Appeals Council  
24                 on the basis that (among other reasons) “new and material evidence is being proffered which  
25                 renders the decision contrary to the weight of the evidence.” (AR 286–87.) Plaintiff additionally  
26                 explained in his request that he was unable to timely submit the supplemental records to the ALJ  
27                 within the ten-day extension the ALJ provided because the records were not received until after  
28                 that date, but they were uploaded on May 20, 2019, that he just began seeking additional therapy  
                    from a new provider, and that he expected to submit a medical statement from that provider. (AR

1 286.)

2 In a correspondence dated June 21, 2019, the Appeals Council granted Plaintiff's request  
3 for additional time to submit information, indicating it would not take action for twenty-five days  
4 (*i.e.*, until July 16, 2019). (AR 12.) The correspondence cautioned Plaintiff that, if Plaintiff did  
5 not submit anything by that deadline, the Appeals Council would conclude Plaintiff did not want  
6 to send any more information and would proceed with its action based on the record it had. (AR  
7 13.) On July 28, 2019, Plaintiff uploaded a medical source statement issued on July 23, 2019,  
8 from his new medical treater, Dr. Gunda. (ECF No. 20 at 5; AR 7–11.)

9 In an order dated August 6, 2020, the Administrative Appeals Judge for the Appeals  
10 Council denied Plaintiff's request for review of the ALJ's decision, making the ALJ's decision  
11 the final decision of the Commissioner. (AR 1–6.) The notice of denial indicated the Appeals  
12 Council would only review the ALJ's decision under one of the following circumstances:

- 13 • The Administrative Law Judge appears to have abused his or  
14 her discretion.
- 15 • There is an error of law.
- 16 • The decision is not supported by substantial evidence.
- 17 • There is a broad policy or procedural issue that may affect the  
18 public interest.
- 19 • We [the Appeals Council] receive additional evidence that you  
20 [Plaintiff] show is new, material, and relates to the period on or  
21 before the date of the hearing decision. You must also show  
there is a reasonable probability that the additional evidence  
would change the outcome of the decision. You must also show  
good cause for why you missed informing us or submitting it  
earlier.

22 (AR 1.) The Administrative Appeals Judge noted Plaintiff submitted eighty-eight pages of  
23 medical records from OMNI Family Health dated June 6, 2016, to April 8, 2019, and five pages  
24 from Sateesh Gunda, M.D. with treatment beginning April 2, 2019. (AR 2.) In denying  
25 Plaintiff's request for review, the Administrative Appeals Judge issued the finding that Plaintiff's  
26 additional evidence “does not show a reasonable probability that it would change the outcome of  
27 the decision” and declined to “exhibit” the evidence. (*Id.*)

28 Plaintiff filed this action on October 14, 2020, and seeks judicial review of the denial of

his application for SSI benefits. (ECF No. 1.) On November 8, 2021, Plaintiff filed an opening brief. (ECF No. 20.) On December 3, 2021, Defendant filed a brief in opposition. (ECF No. 22.) Plaintiff did not file a reply and the matter was deemed submitted.

### III.

#### DISCUSSION

Plaintiff stipulates that the ALJ fairly and accurately summarized the medical and non-medical evidence that was part of the administrative record at the time of issuance of his May 20, 2019 order.<sup>4</sup> (ECF No. 20 at 3.) Plaintiff asserts that the only issue currently before this Court is whether the Appeals Council improperly failed to consider his new evidence.<sup>5</sup> Further, because the ALJ did not review or consider Plaintiff's supplemental records dating June 6, 2016, to April 8, 2019, or Dr. Gunda's July 23, 2019 medical source statement, Plaintiff claims the matter must be remanded to permit a new decision in which the ALJ develops the record and Plaintiff's new evidence is evaluated. (ECF No. 20 at 7.) The Court's analysis is limited to this issue. See Lewis v. Apfel, 236 F.3d 503, 517 n.13 (9th Cir. 2001) (in determining whether to reverse an ALJ's decision, the district court reviews only those issues raised by the party challenging the decision).

#### A. Review Standard for New Evidence Before the Appeals Council

The Regulations govern when the Appeals Council is obligated to review additional evidence submitted after the ALJ issues a decision. See 20 C.F.R. §§ 404.970 (applicable to applications for SSDI benefits), 416.1470 (applicable to applications for SSI benefits) (eff. Jan. 17, 2017). Pursuant to the regulations in effect at the time of Plaintiff's appeal, the Appeals Council "will review a case if . . . the Appeals Council receives additional evidence that is new,

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<sup>4</sup> The Court notes Plaintiff's stipulation only speaks to the accuracy of the ALJ's summary of original evidence and does not stipulate that the ALJ's decision, if based solely on the current administrative record, was correct; however, Plaintiff also presents no argument in the alternative that, if the supplemental records were properly excluded, the ALJ's decision was made in error. See also, e.g., Diedrich v. Berryhill, 874 F.3d 634, 640 (9th Cir. 2017) (holding that "a lack of support from the 'overall medical evidence' is . . . not a proper basis for disregarding" lay testimony observations of a claimant's symptoms). Thus, if the Court had affirmed the Appeal Council's rejection of Plaintiff's supplemental records, any such argument would have been deemed waived.

<sup>5</sup> Defendant similarly characterizes the issue before the Court as being one of whether the evidence submitted to the Appeals Council after the ALJ issued his decision denying benefits was properly considered. (ECF No. 22 at 1–2.)

1 material, and relates to the period on or before the date of the hearing decision, and there is a  
 2 reasonable probability that the additional evidence would change the outcome of the decision.”  
 3 20 C.F.R. § 416.1470(a)(5). Additionally, the claimant must establish good cause exists for the  
 4 late submission. 20 C.F.R. § 416.1470(b).

5 **B. Whether the Appeals Council “Considered” the Evidence**

6 The Ninth Circuit has “routinely considered evidence submitted for the first time to the  
 7 Appeals Council to determine whether, in light of the record as a whole, the ALJ’s decision was  
 8 supported by substantial evidence.” Brewes v. Comm’r of Soc. Sec. Admin., 682 F.3d 1157,  
 9 1163 (9th Cir. 2012) (“we hold that when the Appeals Council considers new evidence in  
 10 deciding whether to review a decision of the ALJ, that evidence becomes part of the  
 11 administrative record, which the district court must consider when reviewing the Commissioner’s  
 12 final decision for substantial evidence.”); see also Lingenfelter v. Astrue, 504 F.3d 1028, 1030 n.2  
 13 (9th Cir. 2007) (noting that when the Appeals Council considers new evidence in denying a  
 14 claimant’s request for review, the reviewing court considers both the ALJ’s decision and the  
 15 additional evidence submitted to the Council).

16 However, the Ninth Circuit distinguishes evidence the Appeals Council has “*considered*”  
 17 from evidence the Appeals Council has merely “*looked at*” to determine whether the additional  
 18 evidence was incorporated into the record. Evidence the Appeals Council *considered* becomes  
 19 part of the administrative record as “evidence upon which the findings and decision complained  
 20 of are based.” Brewes, 682 F.3d at 1162. Where “the Appeals Council only *looked at* the  
 21 evidence,” by contrast, “the new evidence did not become part of the record.” Amor v. Berryhill,  
 22 743 Fed. App’x 145, 146 (9th Cir. 2018) (emphasis added); see also De Orozco v. Comm’r of  
 23 Soc. Sec., No. 1:18-cv-00817-SAB, 2019 WL 2641490 at \*11 (E.D. Cal. Jun. 26, 2019)  
 24 (observing Ninth Circuit distinguished between instances where the Appeals Council formally  
 25 “considered” evidence and made it part of the administrative record with instances where the  
 26 Appeals Council only “looked at” the evidence). Importantly, where the Appeals Council only  
 27 looks at the evidence and it does not become part of the administrative record, the Court “may  
 28 not consider it” unless Plaintiff carries the burden to demonstrate the evidence should have been

considered by the Appeals Council. Amor, 743 Fed. App'x at 146; see also Lowry v. Barnhart, 329 F.3d 1019, 1024 (9th Cir. 2003).

Here, the entirety of the Appeals Council's reasoning for denying Plaintiff's request for review of the ALJ's decision with respect to Plaintiff's new evidence is as follows:

You submitted medical records from OMNI Family Health dated June 6, 2016 to April 8, 2019 (88 pages), and from Sateesh Gunda, M.D., with treatment beginning April 2, 2019 (5 pages). We find this evidence does not show a reasonable probability that it would change the outcome of the decision. We did not exhibit this evidence.

(AR 2.) Defendant argues the Appeals Council properly "considered" the supplemental records. The Court disagrees. Based on the aforementioned holding, it is clear the Appeals Council did not make the supplemental records part of the administrative record. Moreover, while Defendant proceeds to review and analyze Plaintiff's supplemental records in support of its argument that the ALJ's decision was proper, the Appeals Council provides no such analysis of the proposed new evidence (nor did the ALJ). Accordingly, the Court finds the appropriate characterization of the Appeals Council's decision is that the Appeals Council merely "looked at" Plaintiff's supplemental evidence for purposes of denying Plaintiffs' request for review of the ALJ's decision, but did not "consider" it. Brewes, 682 F.3d at 1162; Amor, 743 Fed. App'x at 146; De Orozco, 2019 WL 2641490 at \*11. As such, the Court may not review the supplemental records unless it finds Plaintiff carried his burden to demonstrate the evidence should have been considered by the Appeals Council. See Amor, 743 Fed. App'x at 146; Lowry, 329 F.3d at 1024.

### **C. Whether Plaintiff Met His Burden with Respect to the New Evidence**

When the Appeals Council fails to "consider" additional evidence that satisfies the requirements of §§ 404.970(b) or 416.1470(b), a remand for further administrative proceedings is appropriate. Taylor v. Comm'r of Soc. Sec. Admin., 659 F.3d 1228, 1233 (9th Cir. 2011). It is Plaintiff's burden to establish the evidence should have been considered by the Appeals Council under the Regulations. Hawks v. Berryhill, No. 1:17CV1021, 2018 WL 6728037 at \*4 (M.D.N.C. Dec. 21, 2018) (noting under the amended regulations, "a claimant's burden to have new evidence considered for the first time at the Appeals Council level" includes "a requirement



to show a reasonable probability of a different outcome”). As noted above, this burden includes establishing the evidence is new, material, and there is a reasonable probability that the additional evidence would change the outcome of the decision, it relates to the period on or before the date of the hearing decision, and good cause exists for the late submission. 20 C.F.R. §§ 416.1470(a)–(b). While Plaintiff’s argument is brief, for the reasons discussed herein, the Court is satisfied that Plaintiff has adequately met his burden.

1. Good Cause Exists for the Late-Submission of Supplemental Records

As an initial matter, the Court finds Plaintiff has met the good cause requirement. Plaintiff argues he established under 20 C.F.R. § 416.1470(b)(3)(iv) sufficient good cause for the Commissioner to accept the late-submitted supplemental records and consider them in his review. (ECF No. 20 at 6.) Section 416.1470(b)(3) includes a non-exhaustive list of several “examples” of circumstances under which good cause may be established due to some unusual, unexpected, or unavoidable circumstances beyond the claimant’s control that prevented him from submitting the evidence earlier. The example under subpart (3)(iv) provides “you actively and diligently sought evidence from a source and the evidence was not received or was received less than 5 business days prior to the hearing.” 20 C.F.R. § 416.1470(b)(3)(iv).

Plaintiff proffers he retained counsel on October 18, 2018, which provided limited time to obtain copies of supporting medical records for his claim. (ECF No. 20 at 3.) Plaintiff also proffers the records were difficult to come by “because of the family’s lack of insurance and means to provide treatment that is generally not helpful anyways when dealing with a lifelong disability such as autism,” and because past medical providers were unwilling to provide a medical source statement or narrative describing Plaintiff’s disability, and Plaintiff was required to begin treatment with a new provider (Dr. Gunda) on April 2, 2019. (*Id.* at 3, 5.) Nonetheless, Plaintiff submits he diligently attempted to obtain the required records, but did not receive them in time to submit them to the ALJ for review prior to the hearing date.

Defendant does not oppose Plaintiff’s good cause arguments and instead appears to concede this point by only arguing the Appeals Council properly considered Plaintiff’s supplemental records. (See ECF No. 22 at 5.) Accordingly, the Court finds Plaintiff has



1 sufficiently met the good cause requirement under § 416.1470(b)(3)(iv).

2 2. Plaintiff's Evidence Relates to the Period on or Before the Date of the Hearing  
3 Decision

4 This requirement is easily met. The ALJ issued his decision on May 20, 2019. Plaintiff's  
5 supplemental records pertain to treatment received between June 6, 2016, to April 8, 2019. Dr.  
6 Gunda's medical source statement, though issued on July 23, 2019, also pertains to Dr. Gunda's  
7 evaluation and treatment of Plaintiff during the period of the related medical records. Finally,  
8 Defendant does not oppose a finding that the supplemental records are confined to the appropriate  
9 time period and thereby waives such argument. Accordingly, Plaintiff has met his burden as to  
10 this requirement.

11 3. Plaintiff's Evidence is "New"

12 Evidence is new if it is not duplicative or cumulative. Meyer v. Astrue, 662 F.3d 700,  
13 704–05 (4th Cir. 2011). In addition, evidence can be deemed new if it was not available when the  
14 ALJ issued the decision. Threet v. Barnhart, 353 F.3d 1185, 1191 (10th Cir. 2003). Here, it is  
15 undisputed that the records were not available when the ALJ issued his decision, but were only  
16 submitted to the Appeals Council thereafter. Nor are the records duplicative. To the contrary,  
17 while Plaintiff's medical records contained in the AR mainly focus on his physical impairments  
18 relating to venous insufficiency, right leg pain and ulcer, the supplemental records pertain to  
19 Plaintiff's mental health treatment, which was identified in the medical records incorporated into  
20 the administrative record, but lacked elaboration. Accordingly, the records are deemed "new" for  
21 purposes of § 416.1470(a)(5).

22 4. The Evidence is Material and There is a Reasonable Probability that the Evidence  
23 Would Change the Outcome of the Decision

24 To be material, "the new evidence must bear directly and substantially on the matter in  
25 dispute." The claimant must also "demonstrate that there is a reasonable possibility that the new  
26 evidence would have changed the outcome" of the disability determination. Mayes v. Massanari,  
27 276 F.3d 453, 462 (9th Cir. 2001) (citation and quotation marks omitted).

28 Plaintiff claims, and the ALJ similarly found, that Plaintiff has the severe impairments of

1 depression, anxiety with agoraphobia and obsessive-compulsive disorder, and autism. (ECF No.  
 2 20 at 2; AR 22.) The supplemental records concern Plaintiff's complaints and treatment  
 3 regarding these mental health impairments. Dr. Gunda's medical source statement also directly  
 4 pertains to these impairments. Thus, the supplemental records are material. Mayes, 276 F.3d at  
 5 462.

6 To evaluate whether there is a reasonable probability that the new evidence would change  
 7 the outcome of the ALJ's decision, the Court briefly summarizes Plaintiff's claims and new  
 8 evidence, and the ALJ's denial based on the original evidence only.

9 **a. Plaintiff's Symptom Testimony**

10 Plaintiff maintains he suffers from psychiatric, cognitive development, and vascular  
 11 issues, in addition to problems in his lumbar spine, his most severe impairments being related to  
 12 his psychiatric condition. (ECF No. 20 at 4.)

13 At the April 3, 2019 hearing, Plaintiff, thirty-four-years old, testified that he lives with his  
 14 parents, sleeps in the same room as them, does not have a driver's license, does not have any  
 15 money and cannot manage money, attended high school until grade twelve but did not graduate,  
 16 and has not worked since 2005. (AR 128–29, 135, 139.) Plaintiff testified he is unable to work  
 17 because he has too much social anxiety, he has agoraphobia, and he cannot be around people a lot  
 18 of the time. (AR 130.) Plaintiff has to vacuum, then mop, then clean the counters, and then  
 19 vacuum again, every day immediately after waking up, in order to “sterilize” all the areas his  
 20 parents have touched in the house. (AR 131.) Plaintiff does not go outdoors or take out the trash.  
 21 (AR 132.) He does not use the computer or phone. (AR 133.) He does not have any friends or  
 22 visitors. Plaintiff testified he used to be able to play video games and watch movies, but he  
 23 cannot do even those things anymore. (Id.) Plaintiff testified that he suffers from PTSD from  
 24 being admitted into the hospital after his first suicide attempt, and that he doesn't treat a lot for his  
 25 psychiatric condition because he can't get out of the house. (AR 134–35.) Plaintiff testified that  
 26 he suffers from OCD and autism (Asperger's). (AR 136.)

27 Plaintiff's mother, Rosemary Bispo, testified that Plaintiff spends all his time cleaning the  
 28 same spaces over and over again. (AR 143.) She testified that Plaintiff has had three or four

1 suicide attempts to date, which is why he sleeps in the same room as her. (AR 142.) She  
 2 disagreed with Dr. Zhang's assessment that Plaintiff was capable of carrying out simple  
 3 instructions because when she instructed Plaintiff to do anything, he may not agree with it and not  
 4 do it anyway. (AR 144.) Plaintiff sometimes has fits and starts screaming at his parents, which  
 5 has resulted in physical altercations — Ms. Bispo believes these outbursts are due to Plaintiff's  
 6 autism and Tourette's syndrome. Ms. Bispo testified that Plaintiff lost between eighty to one  
 7 hundred pounds in the last year because he was obsessed with cleaning, wouldn't let her cook for  
 8 him, and wouldn't eat. (AR 145.) Ms. Bispo testified that the reason Plaintiff has not received a  
 9 lot of psychiatric treatment is because of his fear of people, his refusal to leave the house (his  
 10 agoraphobia), and because insurance wouldn't cover it/Plaintiff's parents' inability to pay for  
 11 treatment. (AR 146.)

12 **b. The ALJ's Decision**

13 The ALJ conducted the five-step disability analysis set forth in 20 C.F.R. §§ 404.1520,  
 14 416.920.<sup>6</sup> (AR 17–28.) At step one, the ALJ found that claimant had not engaged in substantial  
 15 gainful activity since April 15, 2016, the application date. (AR 22.) At step two, the ALJ found  
 16 that claimant had the severe impairments of depression, anxiety with agoraphobia and obsessive-  
 17 compulsive disorder, and autism (formerly referred to as Asperger's Syndrome). (*Id.* (citing 20  
 18 C.F.R. § 416.920(c)).) At step three, the ALJ found Plaintiff did not have an impairment or  
 19 combination of impairments that met or medically equaled the severity of the listed impairments  
 20 in 20 C.F.R. §§ 416.920(d), 416.925, and 416.926. (*Id.*)

21 Before proceeding to step four, the ALJ determined that Plaintiff had moderate limitations  
 22 with respect to understanding, remembering, or applying information; interacting with others; and  
 23

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24 <sup>6</sup> The five steps in the sequential evaluation in assessing whether the claimant is disabled are: (1) Is the claimant  
 25 presently engaged in substantial gainful activity? (If so, the claimant is not disabled. If not, proceed to step two); (2)  
 26 Is the claimant's alleged impairment sufficiently severe to limit his or her ability to work? (If so, proceed to step  
 27 three. If not, the claimant is not disabled); (3) Does the claimant's impairment, or combination of impairments, meet  
 28 or equal an impairment listed in 20 C.F.R., pt. 404, subpt. P, app. 1? (If so, the claimant is disabled. If not, proceed  
 to step four); (4) Does the claimant possess the residual functional capacity ("RFC") to perform his or her past  
 relevant work? (If so, the claimant is not disabled. If not, proceed to step five); and (5) Does the claimant's RFC,  
 when considered with the claimant's age, education, and work experience, allow him or her to adjust to other work  
 that exists in significant numbers in the national economy? (If so, the claimant is not disabled. If not, the claimant is  
 disabled). *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir. 2006).

1 concentrating, persisting, or maintaining pace. (AR 23.) The ALJ determined Plaintiff had a  
2 mild limitation with respect to adapting or managing himself. (Id.) The ALJ determined  
3 Plaintiff's residual functional capacity (RFC) permitted him to perform a full range of work at all  
4 exertional levels, but with the following non-exertional limitations: he could occasionally interact  
5 with supervisors and coworkers, but never interact with the general public; he could never  
6 perform work at fast-paced production, such as assembly line work or work involving a conveyor  
7 belt, and he could understand, remember and carry out simple, repetitive tasks and instructions  
8 (but not detailed or complex tasks and instructions). (Id.)

9 At step four, the ALJ found Plaintiff could not perform past relevant work because he had  
10 no past relevant work. (AR 26–27.) At step five, the ALJ determined Plaintiff could perform  
11 jobs existing in significant numbers in the national economy, specifically the jobs of laundry  
12 laborer, industrial cleaner/sweeper, hand packager, marking clerk, and inspector hand packager.  
13 (AR 27.) Therefore, the ALJ found Plaintiff was not disabled. (AR 28.)

14 In reaching this decision, the ALJ considered Ms. Bispo's report — which was consistent  
15 with Plaintiff's testimony. (AR 24–25.) However, the ALJ accorded Plaintiff and Ms. Bispo's  
16 reports "partial weight" because they were not entirely supported by the objective medical record.  
17 (AR 25.) More specifically, the ALJ noted he discounted Plaintiff and Ms. Bispo's allegations  
18 because, other than the State consultants' opinions, there were no other medical opinions  
19 regarding Plaintiff's condition and "[Plaintiff's] allegations alone are insufficient to establish a  
20 disabling condition." (AR 26.) The ALJ also found the evidence was insufficient to establish  
21 Plaintiff's physical conditions were severe for a continuous period of at least twelve months. (AR  
22 25.) To that point, the ALJ noted Plaintiff submitted very little medical records to establish  
23 disabling conditions, and that the records only pertained to 2016 and did not establish disabling  
24 conditions covering the entire period at issue. (Id.) Moreover, the ALJ found the medical records  
25 in which Plaintiff was treated for venous insufficiency and a chronic ulcer in his lower right leg  
26 did not indicate Plaintiff was also treated for any mental health conditions at that time, though  
27 they did note past histories of autism, Tourette's, and spina bifida. (Id.) The ALJ also discounted  
28 Plaintiff and Ms. Bispo's testimony on the basis that Plaintiff did not seek much treatment for any

1 of his purported conditions. (Id.)

2 A state agency psychological consultative examination was completed in June 2016, in  
3 which the examiner assessed Plaintiff with narcissistic and dependent personality disorder and  
4 mild autism spectrum disorder, and opined that Plaintiff was only moderately impaired in his  
5 ability to interact appropriately with coworkers, supervisors and the general public, perform work  
6 without special or additional supervision, and respond appropriately to usual work situations and  
7 changes in routine work settings. (AR 25–26.) The ALJ accorded partial weight to this opinion,  
8 due to the examiner’s limited interaction with Plaintiff, taking Plaintiff and Ms. Bispo’s testimony  
9 into account and finding Plaintiff more limited in his mental functioning. (AR 26.) The ALJ  
10 similarly accorded only partial weight to the State psychological consultant’s opinion, again  
11 because he found Plaintiff was more limited than the examiner opined. (Id.)

12 The ALJ declined to find any medically determinable impairments of venous insufficiency  
13 in the right leg or a right leg skin ulcer, on the basis that there was insufficient objective medical  
14 evidence demonstrating those impairments caused — either singly or in combination with  
15 Plaintiff’s severe impairments — more than a minimal effect on Plaintiff’s ability to perform  
16 basic mental or physical work activities. (AR 22.)

17 **c. Summary of New Evidence**

18 **i. OMNI Records (June 6, 2016, through April 8, 2019) (AR 33–120)**

19 Plaintiff was seen by Dr. Young Park in June and August 2016 for treatment of his right  
20 leg, chest pain, change in appetite, difficulty falling asleep, anxiety, difficulty concentrating, and  
21 feeling down/depressed/hopeless, with little interest or pleasure in doing things. (AR 34–38.) Dr.  
22 Park diagnosed Plaintiff at that time with moderately severe depression, chest pain, OCD, and  
23 cellulitis. Follow-up appointments in August 2016 related to treatment of Plaintiff’s right leg,  
24 which was infected, yielded positive exam results for edema and skin lesion/ulcer, noted the  
25 condition was not improved and getting worse, and it appeared to be an ulcer at least stage III.  
26 During Plaintiff’s August 25, 2016 appointment, his mother explained to the intake nurse that  
27 they tried to find wound care, but their insurance wasn’t accepted, and Plaintiff was directed to go  
28 to the emergency room, if his condition got worse (which he ultimately did). While the main

1 focus of Plaintiff's 2016 appointments was treatment of his leg, the records additionally note  
2 Plaintiff's medical history of autism and OCD.

3 Plaintiff's next encounters at OMNI occurred approximately a year later, in June and July  
4 2017. Plaintiff recounted that in March 2017, he was given antibiotics to treat the ulcer on his  
5 right leg and admitted to the hospital. In June, the ulcer was assessed as ongoing, and Plaintiff  
6 was also treated for rashes appearing on his chest. (AR 48–49.) The medical records from 2017  
7 again note Plaintiff's history of autism, OCD, and anxiety. (See AR 48, 53–58, 60.)  
8 Additionally, Plaintiff had various complaints about nausea, chest pain, an eye infection, rashes  
9 he has had for years, and his venous insufficiency. (See AR 48, 60, 69–70.) Plaintiff was  
10 supposed to follow up with Dr. Bui, who performed surgery on the ulcer on Plaintiff's right leg,  
11 about peripheral venous insufficiency. (AR 60.)

12 During an initial intake visit on June 14, 2017, Plaintiff complained of continuing and  
13 worsening symptoms of his autism, anxiety, and OCD. (AR 53–58.) Plaintiff reported feeling  
14 anxious, fearful, and having racing and compulsive thoughts; he reported thoughts of  
15 death/suicide; difficulty concentrating and falling asleep; diminished interest and pleasure;  
16 excessive worry; fatigue; feelings of guilt; loss of appetite; poor judgment, restlessness and being  
17 easily startled. Plaintiff reported he was diagnosed with developmental disability: autism.  
18 Plaintiff reported a family history of bipolar disorder (his sister), and a history of chronic illness,  
19 depression, relationship problems, social isolation, and unemployment. Plaintiff's mother  
20 reported Plaintiff has a fear of being around people; cannot be around family; is not able to cope;  
21 gets panic attacks every day; has trouble sleeping; was hospitalized in 2009 for mental health  
22 reasons; has Tourette's, and on one occasion, the neighbors heard him saying things and called  
23 the police. (AR 54.) After a documented suicide attempt in June 2017, Plaintiff was deemed a  
24 "medium" suicide risk. (AR 53–54.) A depression screening tool used during intake revealed  
25 Plaintiff had severe depression (his total score was 23). A functional assessment showed "current  
26 needs areas" for Plaintiff included: activities of daily living; behavior management, family, and  
27 social support; mental health/illness management with respect to anxiety; coping/symptom  
28 management skills; cognitive problems, compulsive behavior, and mood instability; and sleep

1 problems.

2 In 2018, Plaintiff had new complaints regarding problems with urination, testicle pain,  
3 severe weight loss, and low back pain. (AR 73–79, 80–90.) Throughout 2018, Plaintiff’s  
4 ongoing conditions of anxiety, OCD, and autism were repeatedly noted; starting in August,  
5 Plaintiff was additionally assessed for an eating disorder due to his drastic weight loss. (See AR  
6 73, 77, 80, 82–84, 86, 93, 95–97, 99, 103.) On July 17, 2018, Plaintiff complained of feeling  
7 tired and having no appetite, over-thinking stuff, and feeling like his mind was busy and  
8 preoccupied. (AR 73.) He was assessed with fatigue, varicose veins in both lower extremities,  
9 dysuria, mild tenderness on bilateral lower back, and poor appetite. (AR 76.) Plaintiff apparently  
10 missed an appointment because he could not leave the house that morning due to his anxiety and  
11 OCD. (AR 86.) On October 24, 2018, Plaintiff was seen due to his continued weight loss and  
12 anxiety, and to follow up on other symptoms. (AR 86–90.) A general examination yielded  
13 findings of bilateral skin darkening, and no ulcers noted. But Plaintiff was assessed with weight  
14 loss, fatigue, left testicular pain, and venous stasis, and was referred for evaluation for vascular  
15 surgery and/or treatment.

16 On October 29, 2018, Plaintiff participated in an intake encounter for purposes of review  
17 by Dr. Gunda. (AR 92–98.) Plaintiff reported anxiety/OCD with respect to leaving his house or  
18 being in public places, constantly cleaning, and getting panic attacks every day, and having  
19 trouble sleeping. Crowds, commotion, and loud noises overwhelm him. Xanax “helps,” but  
20 apparently does not fully alleviate symptoms because Plaintiff’s “OCD is extremely bad.”  
21 Plaintiff reported his autism/Tourette’s causes him to become upset, blurt out things, yell, and  
22 repeat himself constantly. Plaintiff reported his autism was the basis of a developmental  
23 disability diagnosis at some point. Once, because of an outburst, his neighbors called the police.  
24 He was hospitalized in 2009. Plaintiff reported depression related to his isolation and guilt about  
25 the burden he places on his family. He stopped doing things he enjoyed, avoided his sisters, lost  
26 his appetite, and has lost significant weight (100 pounds in past year). General observations  
27 yielded generally normal findings. Yet, the mental status exam yielded findings of a  
28 depressed/anxious mood, and impairment of attention/concentration. Plaintiff was



1 diagnosed/assessed with anxiety, autism, and OCD (unspecified type). He was deemed a  
2 “medium” suicide risk based on his June 2017 documented suicide attempt.

3 On November 12, 2018, Plaintiff underwent a psych evaluation with Dr. Vimal Satodiya.  
4 (AR 99–105.) After reporting the same symptoms previously mentioned, Dr. Satodiya conducted  
5 a mental status exam with generally unremarkable findings, noting Plaintiff was in a euthymic  
6 mood and his thoughts, perception, cognition, insight, and judgment were “within normal limits,”  
7 but nevertheless assessed Plaintiff with autism, anxiety, and OCD. Dr. Satodiya also deemed  
8 Plaintiff a medium suicide risk due to his prior documented attempt in June 2017, despite  
9 Plaintiff’s (present) denials of suicidal ideations during appointments in June 2017, October 2018,  
10 and November 2018.

11 On April 2, 2019, Plaintiff underwent a psychiatric diagnostic evaluation with Dr. Gunda.  
12 (AR 114–20.) Plaintiff rated his mood as 3/10 (with 10 as the best). In his medical history,  
13 Plaintiff reported his sister has bipolar disorder, he was previously diagnosed with a  
14 developmental disability (due to autism), and his medical/surgical history included heart disease.  
15 Plaintiff reported his loss of interest in activities he previously enjoyed; decreased sleep and  
16 difficulty falling asleep and maintaining sleep; and that he felt low-energy, hopeless and  
17 worthless. Plaintiff reported his daily panic attacks, his need to avoid closed spaces and open  
18 spaces where escape is not possible, and his need to clean all the time, which Dr. Gunda  
19 described as “ritualistic.” Plaintiff noted he sleeps in his parents’ room so that he doesn’t  
20 continue to clean throughout the night. Plaintiff again denied active suicidal ideations (though he  
21 acknowledged his previous attempts). Dr. Gunda noted Plaintiff’s sense of responsibility towards  
22 his family was a motivator to seek help. A mental status examination yielded generally normal  
23 observations except for Plaintiff’s anxious mood, and thought content was obsessional. Dr.  
24 Gunda diagnosed Plaintiff with OCD, anxiety, and autism. In Dr. Gunda’s clinical judgment,  
25 Plaintiff was a “moderate-high risk.”

26 ii. Sateesh Gunda, M.D. (Medical Source Statement)

27 In a medical source statement dated July 23, 2019, Dr. Gunda evaluated Plaintiff for  
28 autism, obsessive-compulsive disorder, and anxiety. (AR 7–11.) Dr. Gunda started treating

1 Plaintiff on April 2, 2019, and reports continuing to treat Plaintiff monthly, though Plaintiff did  
2 not submit other records with his supplemental evidence. Dr. Gunda noted Plaintiff's symptoms  
3 included: poor memory, appetite disturbance with weight change, sleep disturbance, personality  
4 change, mood disturbance, emotional lability, recurrent panic attacks, anhedonia or pervasive loss  
5 of interests, psychomotor agitation or retardation, paranoid or inappropriate suspiciousness,  
6 feelings of guilt/worthlessness, difficulty thinking or concentrating, suicidal ideation or attempts,  
7 oddities of thought, perception, speech or behavior, perceptual disturbances, time or place  
8 disorientation, social withdrawal or isolation, decreased energy, obsessions or compulsions,  
9 intrusive recollections of a traumatic experience, persistent irrational fears, generalized persistent  
10 anxiety, somatization unexplained by organic disturbance, hostility and irritability, and  
11 pathological dependence or passivity.

12 Dr. Gunda opined Plaintiff has significant OCD symptoms, to an extent that his ability to  
13 function is impaired, and that Plaintiff's autism adds to these OCD symptoms.

14 Dr. Gunda noted Plaintiff is currently taking Xanax, Trazodone, and Paxil for his  
15 symptoms, which result in side-effects of drowsiness, fatigue, and nausea.

16 Dr. Gunda opined Plaintiff's ability to understand, remember and carry out instructions  
17 was affected by his impairments. More specifically, Dr. Gunda indicated Plaintiff suffered  
18 "extreme loss" of ability in, and therefore lacked capacity to: remember locations and work-like  
19 procedures; to understand, remember, or carry out either very short/simple or detailed  
20 instructions; maintain attention and concentration for longer than two-hour segments of time;  
21 sustain an ordinary routine without special supervision; deal with stress of semi-skilled and  
22 skilled work; work in coordination with or proximity to others without being unduly distracted;  
23 make simple work-related decisions; complete a normal workday or workweek without  
24 interruptions from psychologically-based symptoms; or perform at a consistent pace without an  
25 unreasonable number of rest periods. Dr. Gunda opined Plaintiff suffered either a "marked loss"  
26 or an "extreme loss" with respect to his ability to interact with the public, ask simple questions or  
27 request assistance, get along with coworkers and peers, maintain socially appropriate behavior,  
28 respond appropriately to changes in a routine work setting, take appropriate precautions around

1 hazards, travel in unfamiliar places, or use public transportation.

2 With respect to functional limitations, Dr. Gunda opined Plaintiff suffered from extreme  
3 limitations regarding activities of daily living and social functioning; and that he constantly  
4 suffered from deficiencies of concentration, persistence or pace resulting in failure to complete  
5 tasks in a timely manner; and episodes of deterioration or decompensation in work or work-like  
6 settings causing Plaintiff to withdraw from that situation or experience exacerbation of symptoms.  
7 Dr. Gunda further opined Plaintiff's impairments would cause him to be absent from work more  
8 than three times per month.

9 **d. Analysis**

10 Here, the Court finds that there is a reasonable possibility that the inclusion of the records  
11 would have changed the outcome of the disability determination because they bear on the severity  
12 of Plaintiff's mental health conditions and their impact on his functioning. A prominent theme of  
13 the ALJ's denial of benefits was that there were insufficient medical records to corroborate  
14 Plaintiff and the third party's symptom testimony as to the severity of Plaintiff's impairments.  
15 The supplemental records provide additional support by elaborating on Plaintiff's mental health  
16 condition and treatment. The records demonstrate Plaintiff has consistently complained of  
17 symptoms relating to his anxiety, depression, OCD cleaning habits, agoraphobia, and autism.  
18 Objective findings in the medical records — such as Plaintiff's extreme weight loss arising from  
19 his mental health issues (such as anxiety and OCD); his documented suicide attempt in June  
20 2017, and reports of additional subsequent attempts; examinations that yielded results that  
21 Plaintiff suffered from various skin rashes, skin lesions/ulcer, chest pain, venous insufficiency  
22 and multiple infections; and assessments that Plaintiff was restless, severely depressed, fatigued  
23 and anxious — also lend support to Plaintiff's symptom testimony. Importantly, the time period  
24 covered by the supplemental records from OMNI, which tend more to cover Plaintiff's mental  
25 health issues, overlaps with the records from Dignity Health Memorial Hospital that were  
26 incorporated into the administrative record, which focus nearly exclusively on Plaintiff's physical  
27 conditions. Thus, consideration of the supplemental records would address the ALJ's concern  
28 that the medical records in which Plaintiff was treated for venous insufficiency and a chronic

1 ulcer in his lower right leg did not indicate Plaintiff was also treated for any mental health  
2 conditions at that time, and would reasonably result in a different finding.

3 The medical source statement by Dr. Gunda also corroborates Plaintiff's symptom  
4 testimony. Defendant argues the ALJ would likely not find Dr. Gunda's opinion persuasive  
5 because it is a check-the-box statement. (ECF No. 22 at 5–6.) The Court disagrees. While the  
6 Ninth Circuit has permitted an ALJ to “reject check-off reports that do not contain any  
7 explanation of the bases of their conclusions,” Ford, 950 F.3d at 1155, it has also stressed that  
8 such an opinion cannot be rejected *merely* for being expressed as answers to a check-the-box  
9 questionnaire, Popa v. Berryhill, 872 F.3d 901, 907 (9th Cir. 2017). Further, while Defendant  
10 argues Dr. Gunda's opinion is not supported by the evidence because it was based on only three  
11 months of direct treatment which are not included in the supplemental records, the Court finds Dr.  
12 Gunda's opinion finds additional support in the other supplemental medical records Plaintiff  
13 submitted. Notably, Dr. Gunda evaluated and treated Plaintiff himself on April 2, 2019. Medical  
14 records from Plaintiff's October 29, 2018 appointment expressly indicate the records were  
15 submitted for Dr. Gunda's review. And, because Dr. Gunda is a provider with OMNI, it may  
16 reasonably be inferred that Dr. Gunda had access to and reviewed Plaintiff's prior treatment  
17 records generated at OMNI in preparation of his medical source statement. Finally, the Court  
18 notes the ALJ must explain the weight he gives to all medical source opinions. See 20 C.F.R. §  
19 404.1527(c). More specifically, because Plaintiffs' application was filed before March 27, 2017,  
20 the treating source rule applies, i.e., a treating physician's opinion carries more weight than an  
21 examining physician's opinion, and an examining physician's opinion carries more weight than a  
22 reviewing physician's opinion. Holohan v. Massanari, 246 F.3d 1195, 1201–02 (9th Cir. 2001)  
23 (citations omitted). Thus, even though the State consultants asserted opinions of non-disability,  
24 because Dr. Gunda is a treating physician and the State consultants were examining physicians,  
25 Dr. Gunda's opinion would carry more weight. Thus, the ALJ could only discount Dr. Gunda's  
26 opinion if he articulated specific and legitimate reasons for doing so that were supported by  
27 substantial evidence.<sup>7</sup> Id.; Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005); Lester v.

28 <sup>7</sup> It also bears mentioning that one of Defendant's biggest arguments for rejecting the supplemental records is that,

1 Chater, 81 F.3d 821, 830–31 (9th Cir. 1995).

2 Another basis for the ALJ’s decision was the finding that the evidence was insufficient to  
 3 establish Plaintiff’s conditions were severe for a continuous period of at least twelve months. The  
 4 supplemental records alleviate this issue. That is, while the medical records incorporated into the  
 5 administrative record span from August 30, 2016, through December 8, 2016, Plaintiff’s  
 6 supplemental records cover the period from June 6, 2016, to April 8, 2019 (and Dr. Gunda’s  
 7 opinion covers medical records from June 6, 2016, to at least May 20, 2019, the date of the ALJ’s  
 8 decision). The supplemental records indicate that the leg swelling and ulceration for which  
 9 Plaintiff sought treatment at Dignity Health in August 2016 (as identified in the administrative  
 10 record), for example, constituted an ongoing medical issue potentially arising in October 2015,  
 11 addressed at OMNI in June 2016, requiring a hospital admission in March 2017, and receiving  
 12 continued assessment in June 2017. Plaintiff’s mental health issues are addressed in the ONMI  
 13 records spanning nearly three years. Thus, consideration of the supplemental evidence in  
 14 combination with the records previously incorporated into the administrative record, in total, may  
 15 reasonably result in a different assessment of the severity of Plaintiff’s impairments by the ALJ,  
 16 and his determination as to whether they qualify as a disability under the Regulations.

17 Importantly, “[i]n assessing RFC, the adjudicator must consider limitations and  
 18 restrictions imposed by all of an individual’s impairments [because] limitations due to . . . a ‘not

19  
 20 even in the new records, it is apparent that Plaintiff missed at least one appointment, failed to strictly take all of his  
 21 psychotropic medications, and there remains a general scarcity of medical records. (See ECF No. 22 at 6–7.)  
 22 Defendant argues Plaintiff’s non-compliance goes to credibility and therefore supports the ALJ’s discounting of  
 23 Plaintiff’s symptom testimony. However, both Plaintiff and Ms. Bispo’s testimony at the hearing and Plaintiff’s  
 24 supplemental records contain patient complaints and third-party reports that Plaintiff missed some appointments  
 25 because his anxiety and agoraphobia prevented him from leaving the house that day; Plaintiff was also unable to seek  
 26 additional treatment at times because his family could not afford it when the medical provider refused to accept their  
 27 insurance. These notes in the supplemental records suggest discounting Plaintiff’s testimony for credibility reasons is  
 28 improper where the scarcity of treatment may have instead been a consequence of Plaintiff’s mental health  
 impairments and/or financial situation. See DeLorme v. Sullivan, 924 F.2d 841, 849 (9th Cir. 1991) (noting  
 “mentally ill persons may not be capable of protecting themselves from possible loss of benefits by furnishing  
 necessary evidence”); Gamble v. Chater, 68 F.3d 319, 321 (9th Cir. 1995) (“Disability benefits may not be denied  
 because of the claimant’s failure to obtain treatment he cannot obtain for lack of funds.”); see also Trevizo v.  
Berryhill (9th Cir. 2017) 871 F.3d 664, 681–82 (finding discount of symptom testimony because claimant’s  
 inconsistent answers suggested lack of credibility was not “clear and convincing” where it was also acknowledged  
 that claimant’s inability to answer questions could be related to her possible borderline intellectual functioning). As  
 such, the conflict would need to be addressed by the ALJ in subsequent findings, and it is reasonably possible that  
 resolution of this conflict would result in a different determination of disability.

severe' impairment may prevent an individual from performing past relevant work or may narrow the range of other work that the individual may still be able to do." Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008); see also SSR 96-8p, 1996 WL 374184, at \*5. Plaintiff has stressed that his mental health impairments are the most debilitating with respect to his condition. Indeed, many of Plaintiff's physical impairments previously considered by the ALJ appear to be related to or arising from Plaintiff's mental health impairments. For example, Plaintiff has testified to having a very severe anxiety/obsessive-compulsive need to constantly vacuum, then mop, then vacuum again, clean and sanitize all areas in the home, every day. Plaintiff's leg ulcer was reportedly developed after a vacuum injury, which may have arisen from Plaintiff's obsessive need to constantly vacuum. (See AR 443.) Plaintiff's extreme weight loss in 2018 similarly appears to be a direct consequence of loss of appetite arising from Plaintiff's anxiety and OCD. For this reason, as well, the Court finds there is a reasonable possibility that the inclusion of Plaintiff's supplemental records would have changed the outcome of the disability determination.

In sum, the Court concludes Plaintiff has sufficiently met his burden of establishing the Appeals Council should have considered his supplemental records pursuant to § 416.1470(a)(5). See 20 C.F.C. §§ 404.970, 416.1470. Accordingly, remand is warranted. Taylor, 659 F.3d at 1233.

#### **D. Remand**

The decision whether to remand a matter pursuant to sentence four of 42 U.S.C. § 405(g) or to order immediate payment of benefits is within the discretion of the district court. Harman v. Apfel, 211 F.3d 1172, 1178 (9th Cir. 2000). Except in rare instances, when a court reverses an administrative agency determination, the proper course is to remand to the agency for additional investigation or explanation. Moisa v. Barnhart, 367 F.3d 882, 886 (9th Cir. 2004) (citing INS v. Ventura, 537 U.S. 12, 16 (2002)). Generally, an award of benefits is directed when:

- (1) the ALJ has failed to provide legally sufficient reasons for rejecting such evidence, (2) there are no outstanding issues that must be resolved before a determination of disability can be made, and (3) it is clear from the record that the ALJ would be required to find the claimant disabled were such evidence credited.

1 Smolen, 80 F.3d at 1292. In addition, an award of benefits is directed where no useful purpose  
 2 would be served by further administrative proceedings, or where the record is fully developed.  
 3 Varney v. Sec'y of Health & Human Serv., 859 F.2d 1396, 1399 (9th Cir. 1988).

4 The Court has determined there is a reasonable probability that the cumulative weight of  
 5 Plaintiff's supplemental medical records, Dr. Gunda's medical source statement, and the original  
 6 administrative record would change the outcome of the decision. Consideration of these  
 7 additional records could impact other aspects of the ALJ's decision, such as evaluation of the  
 8 medical evidence, determination of the severity of all of Plaintiff's impairments (mental and  
 9 physical) and the combination thereof, evaluation of Plaintiff's credibility, as well as the  
 10 determination of Plaintiff's physical and mental RFC, and consequently the ultimate  
 11 determination of whether Plaintiff is able to perform work in the national economy.<sup>8</sup> Therefore,  
 12 the matter should be remanded for the ALJ to re-evaluate the entirety of the medical evidence,  
 13 fully develop the record regarding Plaintiff's mental as well as physical impairments, and identify  
 14 legally sufficient grounds to support his decision.

#### 15 IV.

#### 16 CONCLUSION AND ORDER

17 For the foregoing reasons, the Court finds Plaintiff's supplemental medical records are  
 18 new, material, relate to the period on or before the date of the ALJ's hearing decision, and there is  
 19 a reasonable probability that the additional evidence would change the outcome of the decision.  
 20 Accordingly, IT IS HEREBY ORDERED that:

- 21 1. Plaintiff's request for review of the ALJ's decision (ECF No. 20) is GRANTED;
- 22 2. The matter is REMANDED pursuant to sentence four of 42 U.S.C. § 405(g) for  
 23 further proceedings consistent with this decision; and

24 ///

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25 <sup>8</sup> For example, according more weight to Plaintiff's testimony regarding his extreme OCD and anxiety arising from  
 26 sanitary and cleanliness issues may alter the ALJ's prior determination that Plaintiff had the capacity to work as a  
 27 "laundry laborer" or "industrial cleaner/sweeper." According more weight to Plaintiff's testimony of agoraphobia  
 28 would likely impact the ALJ's determination of how reliably Plaintiff could leave his home to go to a job. In another  
 example, if the ALJ credits Plaintiff's testimony of having no friends or visitors and even avoiding his family  
 members, he may reasonably issue a different decision regarding Plaintiff's capacity to interact with supervisors and  
 coworkers.



3. The Clerk of the Court is DIRECTED to enter judgment in favor of Plaintiff Anthony Bispo and against Defendant Commissioner of Social Security.

IT IS SO ORDERED.

Dated: May 20, 2022

  
UNITED STATES MAGISTRATE JUDGE